

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1399

Introduced by
Senators Chevront, Miranda: Gray L, Pearce

AN ACT

AMENDING SECTIONS 42-6201, 42-6202, 42-6203, 42-6204, 42-6205, 42-6208, 42-6209 AND 42-6210, ARIZONA REVISED STATUTES; RELATING TO GOVERNMENT PROPERTY LEASE EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-6201, Arizona Revised Statutes, is amended to
3 read:

4 42-6201. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Government lessor" means THIS STATE, a city, town, county, ~~or~~
7 ~~county stadium~~ SCHOOL DISTRICT OR COMMUNITY COLLEGE DISTRICT, ANY SPECIAL
8 TAXING district ORGANIZED PURSUANT TO TITLE 48 OR ANY OTHER POLITICAL
9 SUBDIVISION OF THIS STATE.

10 2. "Government property improvement" means a building for which a
11 certificate of occupancy has been issued, for which the title of record is
12 held by a government lessor, that is situated on land for which the title of
13 record is held by a government lessor ~~or a political subdivision of this~~
14 ~~state~~ and that is available for use for any commercial, ~~residential rental~~ or
15 industrial purpose, including, but not limited to, office, retail,
16 restaurant, service business, hotel, entertainment, recreational or parking
17 uses.

18 3. "Gross building space" means the total floor area of a building
19 measured from the exterior of the walls, but not including unenclosed areas.

20 4. "Prime lessee" means any person, partnership, corporation, company,
21 limited liability company, joint venture or other organization or association
22 that enters into a lease directly with a government lessor to develop or
23 occupy for at least thirty consecutive days a government property
24 improvement, regardless of whether the improvement is actually used by the
25 prime lessee or by one or more sublessees.

26 Sec. 2. Section 42-6202, Arizona Revised Statutes, is amended to read:

27 42-6202. Commercial government property lease excise tax

28 A. ~~A government lessor shall levy and~~ THERE IS LEVIED AND THE COUNTY
29 TREASURER SHALL collect an annual excise tax on each prime lessee for the use
30 or occupancy of ~~the~~ EACH government lessor's government property improvement.

31 B. A government lessor may not own or operate a government property
32 improvement unless one of the following applies:

33 1. ~~The government lessor levies and collects a commercial~~ THE
34 IMPROVEMENT IS SUBJECT TO THE government property lease excise tax under this
35 article with respect to the improvement.

36 2. The improvement is exempt from tax under section 42-6208.

37 3. Tax on the improvement has been abated under section 42-6209.

38 C. IF AN IMPROVEMENT IS LOCATED ON LAND FOR WHICH THE TITLE OF RECORD
39 IS HELD BY A GOVERNMENT LESSOR, THE IMPROVEMENT IS USED FOR ANY COMMERCIAL,
40 OR INDUSTRIAL PURPOSE AND THE IMPROVEMENT IS NOT SUBJECT TO AD VALOREM
41 PROPERTY TAX, IT IS CONCLUSIVELY PRESUMED THAT THE IMPROVEMENT IS SUBJECT TO
42 TAX UNDER THIS ARTICLE UNLESS:

43 1. THE IMPROVEMENT IS EXEMPT FROM TAX UNDER SECTION 42-6208.

44 2. TAX ON THE IMPROVEMENT HAS BEEN ABATED UNDER SECTION 42-6209.

1 D. WITHIN THIRTY DAYS AFTER ENTERING INTO A LEASE FOR THE OCCUPANCY OF
2 A GOVERNMENT PROPERTY IMPROVEMENT, THE GOVERNMENT LESSOR SHALL:

3 1. RECORD THE LEASE, OR AN ABSTRACT OF THE LEASE CONTAINING DATA
4 PRESCRIBED BY THE DEPARTMENT OF REVENUE, WITH THE RECORDER OF THE COUNTY IN
5 WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED.

6 2. SUBMIT COPIES OF THE LEASE OR ABSTRACT UNDER PARAGRAPH 1 OF THIS
7 SUBSECTION TO THE COUNTY TREASURER AND THE DEPARTMENT OF REVENUE.

8 E. THE DEPARTMENT OF REVENUE SHALL MAINTAIN A PUBLIC DATABASE BY
9 COUNTY OF ALL GOVERNMENT PROPERTY LEASES THAT ARE SUBJECT TO THE TAX UNDER
10 THIS ARTICLE.

11 F. IF A COUNTY ASSESSOR BECOMES AWARE OF A GOVERNMENT PROPERTY
12 IMPROVEMENT THAT IS OR SHOULD BE SUBJECT TO THE TAX UNDER THIS ARTICLE, THE
13 ASSESSOR SHALL NOTIFY THE COUNTY TREASURER AND THE DEPARTMENT OF REVENUE FOR
14 CONFIRMATION THAT THE IMPROVEMENT IS INCLUDED IN THEIR DATABASES.

15 Sec. 3. Section 42-6203, Arizona Revised Statutes, is amended to read:

16 42-6203. Rate of tax

17 ~~A. Except as otherwise provided in this section article, the tax~~
18 ~~authorized by this article shall be levied and collected at the following~~
19 ~~rates:~~

20 ~~1. One dollar per square foot of gross building space for office~~
21 ~~buildings with one floor above ground.~~

22 ~~2. One dollar twenty-five cents per square foot of gross building~~
23 ~~space for office buildings with more than one but fewer than eight floors~~
24 ~~above ground.~~

25 ~~3. One dollar seventy-five cents per square foot of gross building~~
26 ~~space for office buildings with eight floors or more above ground.~~

27 ~~4. One dollar fifty cents per square foot of retail building space,~~
28 ~~including space that is devoted to the sale of tangible personal property,~~
29 ~~restaurants, health clubs, hair salons, dry cleaners, travel agencies and~~
30 ~~other retail services.~~

31 ~~5. One dollar fifty cents per square foot of hotel or motel building~~
32 ~~space.~~

33 ~~6. Seventy-five cents per square foot of warehouse or industrial~~
34 ~~building space.~~

35 ~~7. Fifty cents per square foot of residential rental building space.~~

36 ~~8. One hundred dollars per parking space located in a parking garage~~
37 ~~or deck.~~

38 ~~9. One dollar per square foot of all other government property~~
39 ~~improvements not included in paragraphs 1 through 8 of this subsection.~~

40 ~~B. The tax rate for government property improvements for which the~~
41 ~~original certificate of occupancy was issued:~~

42 ~~1. At least ten years but less than twenty years before the date the~~
43 ~~tax is due is eighty per cent of the rate provided in subsection A of this~~
44 ~~section.~~

~~2. At least twenty years but less than thirty years before the date the tax is due is sixty per cent of the rate provided in subsection A of this section.~~

~~3. At least thirty but less than forty years before the date the tax is due is forty per cent of the rate provided in subsection A of this section.~~

~~4. At least forty but less than fifty years before the date the tax is due is twenty per cent of the rate provided in subsection A of this section.~~

~~5. Fifty or more years before the date the tax is due is zero.~~

~~6. If no certificate of occupancy can be located, dated aerial photographs or other evidence of substantial completion may be used to determine the age of the building for purposes of subsection B of this section.~~

A. THE DEPARTMENT OF REVENUE SHALL PRESCRIBE STANDARD RATES OF TAXATION PER SQUARE FOOT OF BUILDING SPACE, OR PER PARKING SPACE IN THE CASE OF PARKING GARAGES, CALCULATED TO PRODUCE REVENUE THAT IS COMPARABLE TO CURRENT AD VALOREM PROPERTY TAXATION IN EACH PROPERTY TAX JURISDICTION FOR THE SEVERAL VARIETIES OF GOVERNMENT PROPERTY IMPROVEMENTS. THE DEPARTMENT SHALL PRESCRIBE GUIDELINES AND PROVIDE MANUALS FOR THE APPLICATION AND LEVY OF THE TAX RATES. THE DEPARTMENT SHALL PROVIDE COPIES OF THE GUIDELINES AND MANUALS TO EACH COUNTY TREASURER AND TO GOVERNMENT LESSORS AND PRIME LESSEES ON REQUEST.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF THE CURRENT LEASE OF A GOVERNMENT PROPERTY IMPROVEMENT, BETWEEN THE CURRENT PRIME LESSEE AND THE CURRENT GOVERNMENT LESSOR, WAS ENTERED INTO BEFORE JULY 1, 2009, THE APPLICABLE RATE OF TAX PRESCRIBED BY THE DEPARTMENT OF REVENUE PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE DISCOUNTED AND APPLIED AS FOLLOWS:

1. FOR TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2009 THROUGH DECEMBER 31, 2019, THE APPLICABLE RATE OF TAX IS THIRTY PER CENT OF THE RATE OTHERWISE APPLICABLE PURSUANT TO SUBSECTION A OF THIS SECTION.

2. FOR TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2019 THROUGH DECEMBER 31, 2029, THE APPLICABLE RATE OF TAX IS SIXTY PER CENT OF THE RATE OTHERWISE APPLICABLE PURSUANT TO SUBSECTION A OF THIS SECTION.

3. FOR TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2029 THROUGH DECEMBER 31, 2039, THE APPLICABLE RATE OF TAX IS NINETY PER CENT OF THE RATE OTHERWISE APPLICABLE PURSUANT TO SUBSECTION A OF THIS SECTION.

4. FOR TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2039, THE APPLICABLE RATE OF TAX IS THE RATE PRESCRIBED PURSUANT TO SUBSECTION A OF THIS SECTION.

C. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, THE COUNTY TREASURER SHALL COLLECT THE TAX LEVIED UNDER THIS ARTICLE USING THE APPLICABLE RATE PRESCRIBED BY THE DEPARTMENT.

D. The tax rate for a government property improvement that was constructed pursuant to a lease or development agreement entered into from and after June 30, 1996 and that is located outside a slum or blighted area

1 established pursuant to title 36, chapter 12, article 3 is one and one-half
 2 times the rate established ~~by subsections A and B~~ PURSUANT TO SUBSECTION A of
 3 this section.

4 ~~E. Within the first twenty years after the issuance of the original~~
 5 ~~certificate of occupancy, the tax rate on the use or occupancy of a~~
 6 ~~government property improvement is twenty per cent of the rate established in~~
 7 ~~subsections A and B of this section for any of the following:~~

8 ~~1. Government property improvements that are subject to leases or~~
 9 ~~agreements that were entered into before April 1, 1985, and options and~~
 10 ~~rights contained in the leases or agreements.~~

11 ~~2. Government property improvements that are subject to leases entered~~
 12 ~~into based on a redevelopment contract, as defined in section 36-1471,~~
 13 ~~entered into before April 1, 1985.~~

14 ~~3. Government property improvements that are subject to leases entered~~
 15 ~~into based on an agreement for a redevelopment project for which federal~~
 16 ~~grant monies have been received and that was entered into before April 1,~~
 17 ~~1985.~~

18 ~~4. Government property improvements that are located at an airport~~
 19 ~~that was owned on or before January 1, 1988 by a county having a population~~
 20 ~~of four hundred thousand persons or less or by a city or town that is located~~
 21 ~~in a county having a population of four hundred thousand persons or less if~~
 22 ~~the property is used primarily for manufacturing, retail, distribution,~~
 23 ~~research or commercial purposes. In this paragraph, "commercial" includes~~
 24 ~~facilities for office, recreational, hotel, motel and service uses.~~

25 ~~F. E.~~ E. Within the first ten years after the issuance of the
 26 certificate of occupancy, the tax rate on the use or occupancy of a
 27 government property improvement that is located in a slum or blighted area
 28 established pursuant to title 36, chapter 12, article 3, ~~THAT~~ resulted or
 29 will result in an increase in property value of at least one hundred per cent
 30 and ~~THAT~~ is not eligible for abatement pursuant to section 42-6209 is eighty
 31 per cent of the rate established ~~in subsections A and B~~ PURSUANT TO
 32 SUBSECTION A of this section.

33 ~~G. F.~~ F. The tax rate to be applied under subsection A of this section
 34 shall be determined by the predominant use to which the government property
 35 improvement is devoted, ~~except that in all cases the tax rate prescribed by~~
 36 ~~subsection A, paragraph 8 of this section shall be applied to any parking~~
 37 ~~garage or deck.~~ If there is no single predominant use, the tax shall be
 38 determined by applying the appropriate tax rate to the building space devoted
 39 to each use identified in that subsection. For the purposes of this
 40 subsection, the functional area of a government property improvement does not
 41 include subsidiary, auxiliary or servient areas such as lobbies, stairwells,
 42 mechanical rooms and meeting and banquet rooms. For ~~THE~~ purposes of this
 43 subsection, "predominant use" means the use to which eighty-five per cent or
 44 more of the functional area of a government property improvement is devoted.

~~H.~~ G. Prime lessees of government property improvements who become taxable or whose taxable status terminates during the calendar year in which the taxes are due, including prime lessees subject to exemption or abatement under sections 42-6208 and 42-6209, shall pay tax for that calendar year on a pro rata basis.

Sec. 4. Section 42-6204, Arizona Revised Statutes, is amended to read:

~~42-6204.~~ Payment; return; interest; penalty

A. The taxes that are levied pursuant to this article are:

1. Due and payable annually on or before December 1.
2. Delinquent if not paid on or before that date.

B. The prime lessee, if subject to the tax or qualified for an abatement under this article, shall submit a return to the ~~government-lessor~~ COUNTY TREASURER on a RETURN form prescribed by the ~~government-lessor~~ DEPARTMENT OF REVENUE. If the prime lessee is exempt from the tax pursuant to section 42-6208, the prime lessee shall keep and maintain the information required in this subsection. The return form shall be made available by the ~~government-lessor~~ COUNTY TREASURER at least sixty days before the taxes are due and payable and shall include:

1. The name and address of the prime lessee.
2. The location of the government property improvement.
3. The amount of gross building space or number of parking garage or deck spaces. The prime lessee may submit an initial statement of gross building space that is certified by a person who is professionally credentialed in this state as an architect, general contractor, surveyor or appraiser and thereafter shall file an annual statement with the return, under penalty of perjury, that the gross building space is unchanged from the amount previously certified.
4. The date of the original certificate of occupancy.
5. The use or uses of the property.
6. If an abatement under section 42-6209 applies, a certification under penalty of perjury that all elements necessary to qualify for the abatement are satisfied for the year covered by the return.
7. Any other pertinent information that ~~the government-lessor may require~~ IS REQUIRED BY THE RETURN FORM.

C. If any part of the tax is not paid before it becomes delinquent, interest accrues on the unpaid amount at the rate and in the manner prescribed by section 42-1123 until it is paid. Interest on overpayments accrues at the rate and in the manner prescribed by section 42-1123 until the refund is paid BY THE COUNTY TREASURER.

D. The ~~government-lessor~~ COUNTY TREASURER shall assess and collect a penalty of five per cent of any part of the tax that is not paid before it becomes delinquent.

E. The ~~government-lessor~~ COUNTY TREASURER shall issue a receipt to the prime lessee for payments under this article.

F. ON OR BEFORE FEBRUARY 15 OF EACH YEAR, THE COUNTY TREASURER SHALL SUBMIT A REPORT TO THE DEPARTMENT OF REVENUE OF ALL RETURNS AND PAYMENTS RECEIVED FOR THE PRECEDING CALENDAR YEAR UNDER THIS SECTION. THE REPORT SHALL BE IN A FORM AND CONTAIN DATA PRESCRIBED BY THE DEPARTMENT OF REVENUE.

~~F.~~ G. The ~~government lessor shall be~~ COUNTY TREASURER IS entitled to rely upon any information contained in any abatement certification described in subsection B, paragraph 6 of this section unless the ~~government lessor~~ COUNTY TREASURER has actual knowledge that the certification is inaccurate.

Sec. 5. Section 42-6205, Arizona Revised Statutes, is amended to read:

42-6205. Disposition of revenue

A. The ~~government lessor~~ COUNTY TREASURER shall separately account for payments received under this article with respect to each government property improvement.

B. Within thirty days after receiving tax revenues under this article, the ~~government lessor~~ COUNTY TREASURER shall pay to the following taxing jurisdictions in which the government property improvement is located the monies received with respect to the improvement, allocating the revenue among the jurisdictions as follows:

1. The county, for deposit in its general fund, thirteen per cent.

2. The city or town, seven per cent. If the government property improvement is located in an unincorporated area, the revenue that would otherwise be allocated to a city or town shall be allocated to the other jurisdictions identified in this section in the same proportion that the remaining revenues are allocated to them.

3. The community college district, seven per cent. If the government property improvement is not located in a community college district, the revenue that would otherwise be allocated to the district shall be allocated to the other jurisdictions identified in this section in the same proportion that the remaining revenues are allocated to them.

4. The common school district, thirty-six and one-half per cent, the high school district, thirty-six and one-half per cent, the common school district not within a high school district, seventy-three per cent, or the unified school district, seventy-three per cent. If the government property improvement is not located in any school district, the revenue that would otherwise be allocated under this paragraph shall be allocated to the other jurisdictions identified in this section in the same proportion that the remaining revenues are allocated to them.

Sec. 6. Section 42-6208, Arizona Revised Statutes, is amended to read:

42-6208. Exempt government property improvements

The tax under this article does not apply with respect to:

1. Property that is used for a governmental activity.

2. Property that is used for public housing.

3. Easements and rights-of-way of railroads and gas, electric, water, pipeline and telephone utilities.

4. Interests in all or any part of a facility that is owned of record by a government lessor and used primarily for athletic, recreational, entertainment, artistic, cultural or convention activities if the interest is used for those activities or activities directly related and incidental to these uses including concession stands.

5. Property that is located on municipal airports and airports that operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is used for or in connection with aviation, including hangars, tie-downs, aircraft maintenance, sale of aviation related items, charter and rental activities, commercial aircraft terminal franchises, parking facilities and restaurants, stores and other services that are located in a terminal.

6. The use by a commercial airline of the runways and terminal facilities of state, city, town or county airports and public airports operating pursuant to sections 28-8423, 28-8424 and 28-8425.

7. Leases of property or interests in a transportation facility that is constructed or operated pursuant to title 28, chapter 22, article 1 or 2.

8. Interests in property held in trust for an Indian or an Indian tribe by the United States government.

9. Interests in property that is defined as "contractor-acquired property" or "government-furnished property" in the federal acquisition regulations, ~~-(48 Code of Federal Regulations section 45.101)-~~, and that is owned by the government and used to perform a government contract.

10. Property of a corporation that is organized by or at the direction of a county, city or town to develop, construct, improve, repair, replace or own any property, improvement, building or other facility to be used for public purposes that the county, city or town pledges to lease or lease-purchase with county or municipal special or general revenues.

11. Interests in property used by a chamber of commerce recognized under section 501(c)(6) of the United States internal revenue code if the property is used predominately for those federal tax exempt purposes.

12. Interests in property used by organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code.

13. Interests in parking garages or decks if the parking garages or decks are owned and operated by a government lessor or operated on behalf of a government lessor, by an entity other than the prime lessee, pursuant to a management agreement with the government lessor.

~~14. Residential rentals if the prime lessee is the occupant.~~

Sec. 7. Section 42-6209, Arizona Revised Statutes, is amended to read:

42-6209. Abatement of tax for government property improvements in single central business district

A. A government lessor shall **NOTIFY THE COUNTY TREASURER TO** abate the tax provided for under this article for a limited period beginning when the certificate of occupancy is issued and ending eight years after the certificate of occupancy is issued on a government property improvement that

1 is constructed either before or after July 20, 1996 and that meets the
2 following requirements:

3 1. The improvement is located in a single central business district in
4 a slum or blighted area that is established pursuant to title 36, chapter 12,
5 article 3 and is subject to a lease or development agreement entered into on
6 or after April 1, 1985.

7 2. The government property improvement resulted or will result in an
8 increase in property value of at least one hundred per cent.

9 B. Unless waived by the government lessor, the prime lessee shall
10 apply for the abatement before the taxes under this article are due and
11 payable in the first year after the certificate of occupancy is issued. The
12 prime lessee shall notify the government lessor if the government property
13 improvement no longer qualifies for abatement under this section.

14 C. FOR GOVERNMENT PROPERTY IMPROVEMENTS THAT ARE SUBJECT TO LEASES OR
15 AGREEMENTS THAT ARE INITIALLY ENTERED INTO FROM AND AFTER DECEMBER 31, 2009:

16 1. AT THE END OF THE ABATEMENT PERIOD UNDER SUBSECTION A, THE
17 GOVERNMENT LESSOR SHALL CONVEY TITLE TO THE GOVERNMENT PROPERTY IMPROVEMENT
18 TO THE CURRENT PRIME LESSEE OR TO ANOTHER PURCHASER UNDER WHICH THE
19 IMPROVEMENT WILL BECOME SUBJECT TO AD VALOREM PROPERTY TAX.

20 2. THE LEASE MUST INCLUDE A PROVISION PROHIBITING THE TRANSFER OR
21 CONVEYANCE OF THE LEASE BY THE PRIME LESSEE TO ANOTHER PRIME LESSEE BEFORE
22 THE END OF THE ABATEMENT PERIOD.

23 Sec. 8. Section 42-6210, Arizona Revised Statutes, is amended to read:

24 ~~42-6210.~~ Park property lease excise tax

25 A. A county shall levy and collect an annual excise tax on each prime
26 lessee of a lease with the national park service of the United States
27 department of the interior of a property improvement located in the county.

28 B. The tax prescribed by this section shall be assessed, collected and
29 distributed in the same manner as prescribed in this article for the
30 government property lease excise tax, except that:--

31 ~~1.~~ section 42-6206 does not apply to a lease with the national park
32 service.

33 ~~2. The tax rate shall not be less than twenty per cent of the tax rate~~
34 ~~prescribed in section 42-6203, subsection A.~~

35 Sec. 9. Effective date

36 This act is effective from and after December 31, 2009.